

In the Matter of the Appeal of  
PACIFIC MANIFOLDING BOOK COMPANY, LIMITED

For Appellant: W. H. Mordy

For Respondent: **A. A. Manship**, Assistant Franchise Tax  
Commissioner

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chap.13, Stats. 1929) from the action of the Franchise Tax Commissioner in overruling the protest of Pacific-Burt Company, Limited, against a proposed assessment of an additional tax of \$43.90, with interest, based upon its return for the fiscal year ended March 31, 1928, and another proposed assessment of an additional tax of \$496.04 based upon its return for the fiscal year ended March 31, 1929.

This Appellant which does business here and elsewhere complained of the formula used by the Commissioner to allocate to California "the portion of net income reasonably attributable to the business done within this state." (Stats. 1929, Chap. 13 Sec. 10.) The Commissioner has given equal weight to the three factors of (1) average value of real and tangible personal property, (2) wages, salaries, commissions and other compensation of employees, and, (3) gross sales. He has rejected a fourth factor, viz., purchases of raw materials, which the Appellant claims should have been given equal weight with the other three in arriving at the California proportion of its net income.

The pertinent provisions of the statute are to be found in Section 10 of the Act, which reads as follows:

"If the entire business of the bank or corporation is done within this state, the tax shall be according to or measured by its entire net income; and if the entire business of such bank or corporation is not done within this state, the tax shall be according to or measured by that portion thereof which is derived from business done within this state. The portion of net income derived from business done within this state shall be determined by an allocation upon the basis of sales, purchases, expenses of manufacture, payroll, value and situs of tangible property, or by reference to these or other factors, or by such other method of allocation as is fairly calculated to assign to the state the portion of net income reasonably attributable to the business done within this state and to avoid subjecting the taxpayer to

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double taxation.

"If the Commissioner reallocates net income upon his examination of any return, he shall, upon the written request of the taxpayer, disclose to him the basis upon which his reallocation has been made."

The Appellant's argument seems to be based primarily upon the proposition that, because "purchases" are mentioned in Section 10 of the Act, they must be considered in arriving at "the portion of net income reasonably attributable to the business within this state." We do not so interpret the law. The allocation may include "purchases" as a factor but need not do so unless that inclusion is necessary to arrive at a fair apportionment of the net income. The methods to be employed for allocation are stated in the alternative and the only positive requirement concerning them is that the one adopted be "fairly calculated to assign to the state the portion of net income reasonably attributable to the business done within the state and to avoid subjecting the taxpayers to double taxation."

Inasmuch as the taxpayer has no right to insist, as matter of the law, that the factor of "purchases" be included in the apportionment of its net income, unless it be shown that the consideration of this factor is necessary to produce a proper allocation, we think that it was incumbent upon the Appellant to submit evidence to us from which this necessity could be deduced. This the corporation has failed to do.

The business of the taxpayer is that of manufacturing sales book and continuous form stationery. It appears that this necessitates printing from large mill rolls of paper in various sizes, grades and colors and that only a small part of this material is manufactured in California, so that the taxpayer must purchase substantially all of the raw materials used in the manufacture of its product outside of the state. Thus, by including "purchases" as one of the factors in the allocation of its net income it would materially reduce the earnings assignable to California.

We are not prepared to say that in every case purchases should be considered in the apportionment of net income and in the absence of any further showing on the part of the taxpayer why in its particular case purchases must be employed as a factor in the apportionment formula in order to produce a correct allocation, we do not believe that we should be warranted in holding that the factor is indispensable to an adequate formula.

ORDER

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of Reynold E. Blight, Franchise Tax Commissioner, in overruling the protest of Pacific-Burt Company, Limited, a corporation, against the proposed assessment of additional taxes of \$43.90 and

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\$496.04 based respectively upon the returns of said corporation for the fiscal years ended March 31, 1928, and March 31, 1929, under Chapter 13, Statutes of 1929, be and, the same is hereby sustained.

Done at Sacramento, California, this 4th day of August, 1930, by the State Board of Equalization.

R. E. Collins, Chairman  
Fred. E. Stewart, Member  
H. G. Cattell, Member  
Jno, C. Corbett, Member

ATTEST: Dixwell L. Pierce, Secretary